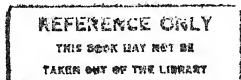


COMPENSATION FOR ROAD ACCIDENTS

A CONSULTATION PAPER

LORD CHANCELLOR'S DEPARTMENT



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COMPENSATION FOR ROAD ACCIDENTS

A CONSULTATION PAPER

PART I: INTRODUCTION

1.1 This paper explores the feasibility of a no-fault compensation scheme, restricted to less serious road accidents and financed by private insurance. The objective of such a scheme would be to provide a fair, simple, expeditious, non-contentious system of compensation with a useful but carefully limited scope at no additional cost to public funds.

1.2 The key elements in the scheme now proposed are as follows:

- the scheme would be limited to accidents involving motor vehicles;
- it would cover claims for personal injury compensation (but not vehicle or other property damage);
- compensation payments would be subject to a maximum of £2,500 for individual claims;
- victims would not need to prove that another person was at fault;
- the range of road accident victims eligible for compensation would be wider than under existing arrangements;
- disputes over liability in the case of less serious injuries should be greatly reduced;
- it is for consideration whether certain classes of victim who are authors of their own misfortune should be excluded from benefiting under the scheme (for example, drinking drivers);

- the scheme would be funded and operated by the insurance industry via motor vehicle premiums;
- an increase in the level of premiums should be expected.

1.3 The feasibility study stems from a recommendation made in the Report of the Review Body on Civil Justice (Cm 354, 1988). While the report related only to England and Wales, this consultation paper covers the United Kingdom as a whole. The purpose of this paper is to obtain the views of the general public, as well as the insurance industry, motoring organisations, lawyers and other interested persons and bodies on the matters considered in the paper.

A. Civil Justice Review

1.4 The Civil Justice Review made the following comments and recommendation in relation to no-fault compensation for road accident victims:

455. Reform of the substantive law of negligence was not within the scope of the Review, but it was clear from responses to consultation that there existed a body of opinion in favour of some form of no-fault scheme, that is to say a scheme in which compensation for injury is obtainable without proving fault and is provided outside the tort system. Existing no-fault schemes include various forms of state provision by way of social security, including the industrial injuries scheme, several types of disability benefit, and the Criminal Injuries Compensation Scheme. There are also various private schemes relating to occupational sick pay, employers' accident and health insurance and early retirement provisions under occupational pension schemes.

456. Although the Review Body has not closely examined this proposal, it would seem that a number of advantages might flow from the introduction of a no-fault scheme funded by private insurance and restricted to claims arising out of less serious road accidents. Such a scheme might provide for arbitration as to the levels of compensation, possibly accompanied by published tariffs. It would reduce uncertainty for claimants, avoid the delays and costs associated with litigation and by removing disputes from the courts, reduce pressure on the court system. On the other hand, it would also increase motor insurance premiums. Further consideration of the feasibility of introducing such a scheme should be the subject of consultation with insurers.

R.62 The Lord Chancellor should consider, in consultation with the insurance industry, the feasibility of a no-fault scheme, restricted to less serious road accidents and financed by private insurance.

B. Working Party

1.5 In July 1989, the Lord Chancellor announced the Government's acceptance of this recommendation. A working party was constituted later in the year for the purpose of conducting the feasibility study on behalf of the Lord Chancellor. In addition to the Lord Chancellor's Department, the other Departments represented were the Department of Transport, the Department of Trade and Industry, the Department of Health, the Department of the Environment, the Scottish Office Home and Health Department, the Welsh Office and the Northern Ireland Office.

1.6 This paper has been prepared by the working party. Earlier drafts of the paper have been discussed with representatives

of the insurance industry who provided valuable help to the working party, both on technical issues relating to current insurance law and practice, as well as on the general questions raised by the feasibility study. Nevertheless, the proposals set out in this paper must not necessarily be taken to represent the views of either the insurance industry as a whole or individual insurance companies.

C. Compensation and road safety

- 1.7 Reducing the number and severity of road accidents is an important objective and the Government has set a target of reducing road accident casualties by one third by the year 2000. The Department of Transport is pursuing a range of policies to achieve this objective. These include better vehicle design to reduce the risk of injury in an accident; safety engineering schemes and improved roads generally; road safety education for children; driver and rider training; publicity campaigns targeted on current problems.
- 1.8 The possible impact of any scheme for compensating road accident victims upon the behaviour of road users will have to be considered, and full weight given to road safety in the assessment of alternative schemes.

D. Scotland

- 1.9 The Review Body on Civil Justice, already referred to, made recommendations affecting the law in England and Wales and did not extend to Scotland. Scotland has its own distinctive legal system and court structure. Nevertheless the key elements identified at paragraph 1.2 above seem equally applicable in Scotland as are the proposals on which comment is sought in Part V. The differences between the law of Scotland and that of England and Wales and Northern Ireland in the field of damages for personal injury are, to a large extent, ones of terminology. As Scottish

commentators will be aware, the law of tort, described in Part II of the paper, is more appropriately the law of delict in Scotland. Although there are technical differences between the Scottish delict and the English tort, for the purposes of this paper the expressions are sufficiently close to be used without qualification. Accordingly, where reference is made to "tort" in the remainder of this paper, it is intended to include "delict". However, a brief summary of the delictual system is given at paragraphs 2.12-2.15. Similarly where the words "plaintiff" or "defendant" occur, these include "pursuer" and "defender" in Scotland. The Scottish court system is described at paragraph 2.19.

E. Northern Ireland

1.10 Insofar as Northern Ireland is concerned, the position in relation to compensation for road accidents is on the whole similar to that in England and Wales. That is to say, the Province has a similar tort system, a broadly corresponding body of Road Traffic legislation and the Motor Insurers' Bureau operates there to protect the victims of uninsured or untraced motorists. In addition it is significant that almost all the major insurance companies operate in Northern Ireland as they do elsewhere in the United Kingdom. Accordingly, the issues raised in this paper are just as relevant in Northern Ireland as in the other parts of the United Kingdom and the consultation is similarly addressed to interested parties there.

F. Outline of the paper

1.11 Part II of the paper outlines the present position. In Part III, the paper refers to previous recommendations for reform of the law and then examines the case for introducing a no-fault scheme along the lines envisaged by the Civil Justice Review. Part IV outlines the possible options for a scheme

of no-fault compensation. Finally, Part V sets out a summary of proposals and questions for consultation.

1.12 The term "no-fault compensation" is used throughout this paper. Although it is often used elsewhere to refer to a system of obtaining compensation from a fund instead of proceeding against the person responsible for the injury (an option discussed in this paper), it is used more generally in this paper as a convenient shorthand expression to refer to compensation which is obtainable without proving fault and which is provided outside the tort system.

PART II: THE PRESENT POSITION

A. Facts on road accident casualties

- 2.1 In 1989 nearly 5,400 people were killed and some 336,000 were injured in road accidents in Great Britain. (Provisional figures for 1990 are 5,100 killed and 340,000 injured.) Almost all these deaths and injuries occurred in accidents involving a motor vehicle.
- 2.2 Of those killed and injured, some 32% were car drivers, 22% were car passengers, 12% were motorcycle riders or passengers, and 18% were pedestrians. However, accidents involving pedestrians tend to be more severe than those involving other road users: thus, of those killed in road accidents, 32% were pedestrians.
- 2.3 Some types of road user are more likely to be injured than others. In terms of casualties per vehicle kilometre, compared to car drivers, motor cyclists are seven times as likely to be involved in an accident and 19 times as likely to be killed or injured. In terms of casualties per head of population, child pedestrians aged 10-14 are more than twice as likely to be killed or injured as adults. A driver aged under 20 is three times as likely to be killed or injured as one of middle age.

B. Liability in tort

- 2.4 The tort system, as explained in paragraph 2.6 below, plays an important role in the present system of compensation for road traffic injury. But many road accident victims receive support from other sources, such as sickness benefit, invalidity benefit, disablement benefit, occupational sick pay and from personal accident cover under the terms of their own individual insurance policies.

- 2.5 The common law principle that liability is based on fault has governed compensation for road traffic injury for a very long time. It has continued to do so during the significant increase in the scale and seriousness of road injury which followed the advent of the motor car.
- 2.6 It is well settled that a duty of care is owed by a road user to any other road user near enough to be affected by his actions. The standard of care is always that of a reasonable man in the circumstances. To establish liability, the plaintiff must show that the defendant's conduct fell below that standard as a result of which he suffered damage.
- 2.7 The injured plaintiff will be entitled to a sum of damages (the "quantum") which is calculated to compensate him for his loss, that is, it is required to be a sufficient sum of money to put him in the position he would have been in but for the injury, so far as is possible. Awards are made for loss of earning capacity, loss of amenity, past and future pain and suffering, past and future expenses incurred as a result of the injury and past and future wage loss. Awards are made on a lump-sum basis. Courts in fact do not often determine the size of the award: most cases are settled. The size of the settlement will be determined by reference to the amount the parties believe the court would award if the case went to trial, but may be reduced to reflect uncertainty over the court's decision, both with respect to liability and quantum. A settlement out of court is reached in over 90% of all cases in which compensation is paid.

1. Defences

- 2.8 The main defence to a civil claim for negligence in the present context (apart from a denial of liability) will be contributory negligence, which is to be distinguished from the separate defence of voluntary assumption of risk.

(i) Contributory Negligence

2.9 The defendant can secure a reduction of the damages, by showing that the accident was contributed to by the negligence of the plaintiff. The Law Reform (Contributory Negligence) Act 1945 provides that negligence by the plaintiff which was merely contributory would reduce the damages awarded to the extent to which he was to blame for the accident. In determining whether there is negligence, the standard of care is the same for the plaintiff as for the defendant.

2.10 Contributory negligence in relation to road injuries has been held to include failure by drivers and front seat passengers to wear seat belts. It has been held that, in cases where liability was not in dispute, a driver or front seat passenger would normally have his damages reduced by 25% if injuries could have been entirely avoided by wearing a seat belt, and by 15% if injuries would have been less severe.

(ii) Assumption of Risk

2.11 If the plaintiff has knowingly and voluntarily incurred the risk of injury, the defendant may plead the defence of voluntary assumption of risk (*volenti non fit injuria*). But this defence is rarely successful in road accident cases. Section 149(3) of the Road Traffic Act 1988 provides that willing acceptance by a passenger of the risk of a vehicle user's negligence shall not be treated as negating the user's liability towards him. The Unfair Contract Terms Act 1977 prohibits the exclusion of liability for death or personal injury in a business context.

C. Scotland - Liability in delict

- 2.12 As previously noted, the Scottish equivalent to the law of tort is the law of delict. A delict is the conduct, whether deliberate or negligent, and whether by act or omission, of a person, with the requisite state of mind, in breach of a legal duty imposed by law as the result of which some other person has suffered hurt, or loss or harm. A person can include a legal person, i.e. a company. The person who has committed the delict has an obligation in law to make reparation, for example to pay a sum by way of damages or restore damaged property to its former condition if that is possible, to the person who suffered from it.
- 2.13 The substantive law is governed by the common law and under statute law - primarily the Damages (Scotland) Act 1976. As in England and Wales the fundamental basis of delictual liability is the concept that where injuries or damage have been occasioned by the fault of the defender, he should pay compensation for such injuries or damage, reduced in proportion to the injured person's own contributory negligence if any. Also as in England and Wales the defender may plead the defence of voluntary assumption of risk.
- 2.14 An injured party in Scotland can claim two kinds of compensation; namely patrimonial loss - this includes damages for medical and other out-of-pocket expenses, loss of earnings including the loss of advantage on the labour market, and *solatium* - which is the element of award made for non pecuniary loss (comparable to "general damages" in England and Wales) which includes wounded feelings, physical injury or nervous shock, or may include a claim for shortened expectation of life. The claims may also include outlays and expenses. A claim may also be made for the cost of services supplied to the pursuer by family members under Part II of the Administration of Justice Act 1982.

2.15 Different provisions apply where the injured person dies; the executors inherit the rights of the deceased person to continue or raise an action for patrimonial loss up to the date of death but do not inherit the right to recover *solatium* for injuries. The deceased's dependants may claim patrimonial loss which is limited to loss of support and reasonable outlays and expenses incurred in connection with the death. The amount of loss of support is assessed by reference to the amount of support which the dependant has been receiving from the deceased and might reasonably have been expected to receive in the future. The dependants may not claim *solatium* but are entitled to claim "loss of society" awards, designed to acknowledge the non-pecuniary loss suffered by the husband, wife, parent or child of the deceased.

D. Civil litigation arising from road accidents

2.16 At present, personal injury claims up to £5,000 fall within the jurisdiction of the county courts. The High Court handles the more substantial civil cases, although smaller cases may be started there. From July 1991, the jurisdictions of the two tiers of civil court will be altered. The effect on personal injury claims will be that in future all claims below £50,000 will start in a county court, with only the more important and complex cases being transferred to the High Court.

2.17 In 1990, 10,295 cases relating to personal injuries claims arising from negligence were dealt with in both the High Court and the county courts. Of these some 5,203 (50%) arose from road accident cases. The split between the High Court and the county courts was 2,183 and 3,020 cases.



2.18 Of those cases before the county courts, some 2,148 (71%) involved monetary awards of less than £2,500.

2.19 In Scotland the value of the claim determines the venue for hearing the case and the appropriate venue for dealing with it. If the claim does not exceed £750 the case will be dealt with in the Sheriff Court under Small Claims Procedure. Claims of value between £750 and £1,500 are also dealt with in the Sheriff Court under Summary Cause Procedure. The Court of Session and Sheriff Court have concurrent jurisdiction to deal with claims of value over £1,500.

E. Protection of the public

1. Compulsory insurance

2.20 Compulsory insurance or security against third party liabilities was introduced in Great Britain for drivers of motor vehicles by the Road Traffic Act 1930. The Road Traffic Act 1934 restricted the grounds on which insurers could repudiate liability for third party injury claims; in 1971 cover was extended to liabilities towards voluntary passengers; and in 1988 cover in respect of liability for damage to a third party's property became compulsory.

2.21 Provisions for compulsory insurance or security against third party risks in Great Britain are now contained in Part VI of the Road Traffic Act 1988; corresponding provisions apply in Northern Ireland. (For convenience, references in the paper to insurance include cover under such a security: see section 146 of the 1988 Act.) It is an offence for any person to use a motor vehicle on a road, or cause or permit any other person to do so, unless such use is covered by insurance against the risk of injury to third parties (including passengers) or damage to property.

2.22 Certain persons are exempted from the requirement to insure. This applies essentially to bodies presumed to have sufficient resources to meet claims from their own funds without the backing of an insurer, for example local authorities and police authorities. The requirement also does not apply to the Crown. As an alternative to taking out an insurance policy, vehicle users may deposit as a security the sum of £15,000 (sum under review) with the Accountant General of the Supreme Court.

2.23 The insurance cover required by law is limited to the risk of third party claims for death or bodily injury (including injured passengers), or damage to property caused by, or arising out of, the use of the vehicle on a road; compulsory insurance requirements in the territories of other EC Member States; and any liability under sections 157-159 of the Road Traffic Act 1988 to pay for hospital or emergency medical treatment. In practice almost all private motor policies also cover third party claims for injury or damage on private property, and injury or damage caused by passengers. Some 70% of private motorists hold comprehensive policies which, in addition, provide cover for damage to their own vehicles and sometimes a limited amount of personal accident cover for personal injury to themselves.

2.24 Insurance is not required in respect of non-motor road vehicles, such as pedal cycles.

2. Victims of Uninsured or Untraced Motorists

2.25 The Motor Insurers' Bureau (MIB) exists to ensure that accident victims are able to recover compensation in respect of a compulsorily insurable liability even where the driver responsible for an accident was in fact uninsured or cannot be traced. The Bureau is financed by a levy on the premium

income of motor insurers all of whom are required by the Road Traffic Act to be members of the Bureau.

2.26 The Bureau's responsibilities are contained in three formal agreements with the Secretary of State for Transport (similar agreements are in force in Northern Ireland):

- (a) The Uninsured Drivers' Agreement 1988 is the latest in a series of similar agreements dating back to 1946 requiring the Bureau to satisfy a court judgment in respect of a compulsorily insurable liability if it remains outstanding for more than seven days. In practice most applications under the Agreement are settled by negotiations between the Bureau and the victim without the need for a formal judgment. Where a payment is made under the Agreement the Bureau has the right to recover the amount paid from the uninsured driver;
- (b) The Untraced Drivers' Agreement 1972 requires the Bureau to consider any application made to it concerning the death of, or bodily injury to, any person caused by a driver who cannot be traced. (Before 1969 such cases were given "sympathetic consideration" by the Bureau under the Uninsured Drivers' Agreement, but were not for themselves the subject of a formal agreement). The procedure under the Agreement is that the Bureau investigate cases and if it appears that, on the balance of probabilities, the untraced motorist would have been liable to pay damages to the victim, then the Bureau assess and pay compensation "in like manner as a court". Applicants have a right of appeal to an independent arbitrator (drawn from a panel of QCs appointed by the Lord Chancellor (or by the Lord Advocate in Scotland)) against any decision of the Bureau on either liability or quantum.

- (c) The Untraced Drivers' Agreement 1977 supplements the 1972 Agreement ((b) above) and provides for a less formal - and less time consuming - procedure for dealing with applications estimated at not more than £50,000 (represented applicants) or £3,500 (unrepresented applicants) on full liability. (These figures are currently under review for the purpose of raising them.) Only straightforward cases - the great majority - are handled in this way, and although the applicant waives any right of appeal under this "accelerated procedure" he is entitled to revert to the full procedure under the 1972 Agreement if dissatisfied with the offer made to him.

2.27 In 1989, the Bureau received some 15,000 applications under the agreements and paid some £28 million in compensation.

PART III: THE CASE FOR CHANGE

3.1 Before setting out the case for changing the existing provisions for compensating victims of road accidents, it will be helpful to refer to the Royal Commission on Civil Liability and Compensation for Personal Injury (the Pearson Commission) which reported in 1978.

A. The Pearson Commission

3.2 The Pearson Commission's Report criticised the present system of tort compensation for road injury. The essence of their criticisms was that:

- (i) Too few victims are compensated.
- (ii) The entitlement to compensation depends too much on chance.
- (iii) The system is unduly slow.
- (iv) The system is expensive to administer.

3.3 The Commission pointed out that these criticisms can also be levelled, to a varying degree, at tort compensation for other types of injury, but a number of considerations, in their view, justified singling out this system for reform: these included the scale of injuries, the range of victims, the likelihood that the injuries will be serious, the importance of road transport and the fact that Parliament had long recognised the unique features of motor vehicle injury by providing compulsory insurance provisions against third party risks.

3.4 Accordingly, the Pearson Commission recommended the setting up of a scheme to compensate victims of road accidents which would not require proof of negligence. The scheme was to

be financed by a direct levy on petrol, administered by the Department of Health and Social Security (as it then was), and based on an improved industrial injuries scheme. Victims of negligent drivers would continue to have a right of damages backed up by compulsory motor insurance. Thus, the action in tort would not be abolished, but would be of greatly reduced importance except in very serious cases.

3.5 In the context of this more limited role for tort, the Pearson Commission considered whether the present basis of liability should be changed to one of "strict liability". Under a regime of strict liability, the owner or driver of a motor vehicle would be liable for any injury caused by his vehicle whether or not he was to blame, subject to such defences that the injury resulted from a sudden and unexpected event beyond the defendant's control, or from an act of a third party. Sometimes, it is also a complete defence to prove that the victim suffered injury through his own gross negligence. Damages are usually reduced for contributory negligence.

3.6 The Commission concluded that strict liability should not be imposed for motor vehicle injury. While they accepted that strict liability would improve the victim's chances of obtaining compensation, this need would be met by the proposed no-fault compensation scheme. They also thought that the imposition of strict liability would place an unfair financial burden on the motorist.

3.7 The Government's view has been that there are grave drawbacks to the no-fault scheme recommended by the Pearson Commission. The Government has stated [Hansard (H.L.), 20 January 1982, Vol. 426, cols. 657-658 (Lord Bellwin)] that:

- (i) There should be no preferential treatment for the victims of road accidents.

- (ii) The special levy on petrol would not be a practical way to finance the scheme because, as an earmarked payment, it would be too small.
- (iii) Too much public expenditure would be required. The number of extra staff required would be about 1,000, including 200 doctors.

B. Criticisms of the present system

3.8 The criticisms of the existing system of tort compensation for road injury made by the Pearson Commission remain valid, although, as noted below, some improvements have been made or are planned and these should have the effect of ameliorating the present position in a number of important respects.

1. Too few victims are compensated

3.9 A substantial number of road accident victims receive no tort compensation. In a survey carried out by the Pearson Commission, only 25 per cent of those injured by motor vehicles succeeded in recovering tort compensation. Most of the remainder did not claim in tort at all for a variety of reasons. Among the reasons given were that they regarded the accident as their own fault or nobody's fault, that their injuries were not serious, that they did not know how to claim, and simply that they did not want to make a fuss. The Commission noted that claimants injured in a motor vehicle accident had an advantage not enjoyed by people injured in other ways, namely that if their claim is accepted, they seldom experience difficulty in securing payment.

3.10 The findings of the Pearson Commission were confirmed in the more recent Compensation Survey carried out by the Oxford Centre for Socio-Legal Studies (1984), which indicated that

fewer than one in three (29%) of road accident victims obtained damages. In 66% of cases, victims made no claim at all.

2. The entitlement to compensation depends too much upon chance

- 3.11 Tort compensation for a person injured by a motor vehicle can be recovered only if the defendant was at fault. Even good drivers make mistakes, but not all driving mistakes constitute legal fault. Mistakes may vary in nature from reckless or dangerous driving in which no reasonable man would indulge to a minor slip of the sort made by good drivers. But any driving mistake may cause injury. Whether it does so may depend on factors, such as the condition of the road surface, which are outside the driver's control.
- 3.12 Some accidents are not caused by anyone's fault: the example often quoted is the case where a driver has a sudden heart attack and the car veers off the road and strikes a pedestrian. No question of fault arises, and therefore the victim is unable to recover tort compensation.
- 3.13 As noted earlier, even if the injuries have been primarily caused by another's legal fault, the victim's compensation may be reduced by a finding of contributory negligence.
- 3.14 A road accident victim is also likely to be faced with a number of practical difficulties in establishing a claim for tort compensation, particularly the difficulty of obtaining reliable witnesses. Road accidents, by their nature, are almost instantaneous and usually unexpected; and the lapse of time between the accident and the trial tends to increase the unreliability of the witness' memory, even if the witnesses were present and are prepared to come forward.

3. Delay

3.15 Tort compensation claims take time to settle. Both the Pearson Commission and, more recently, the Civil Justice Review drew attention to the extent of the problem of delay in this context. The latter pointed out that delay undermines justice, reduces the availability of evidence and erodes the reliability of that which is available, denies compensation to those who are entitled to it until long after it is most needed and saps public confidence in the capacity of the courts to do justice. It also causes continuing personal stress, anxiety and financial hardship and may induce economically weaker parties to accept unfair settlements.

3.16 A number of the recommendations of the Civil Justice Review were directed towards speeding up case progress, and most of these have either already been or are about to be implemented:

- (i) reduction in the period for service of writ from 12 months to 4 months (June 1990);
- (ii) court power to split trial to establish liability in advance of damages (February 1990);
- (iii) automatic directions in county court personal injury cases providing parties with a timetable of standard directions leading to trial (February 1990);
- (iv) county court power to award provisional damages (June 1990);

- (v) increase in number of county court trial centres enabling trials to be heard from beginning to end without need to adjourn for lack of court time, thereby increasing courtroom usage and improving disposal rates.

3.17 New rules have already been introduced in England and Wales requiring earlier disclosure of medical reports and statements of special damages by the plaintiff. It is intended to extend pre-trial exchange of written statements as a means of clarifying the issues and shortening trials; this may also result in earlier and better informed settlements. The Lord Chancellor will also be considering steps to allow courts to exercise an interventionist role in ensuring case progress.

3.18 In Scotland considerable progress has been made in recent years to reduce delays in the Supreme and Sheriff Courts. In the Supreme Courts delays are now approaching recommended levels and in the Sheriff Courts delays in dealing with Ordinary Civil business have been reduced. Court procedures in the civil courts are presently being reviewed by both the Court of Session and Sheriff Court Rules Councils, with a view to reducing delay, cost and complexity in civil litigation.

3.19 These measures will do much to improve the efficiency of the litigation process, and assist those who have to resort to the courts to establish their claims for compensation.

4. Cost

3.20 The Pearson Commission found that administration costs amount to about 45% of the total cost of tort compensation, for road injuries as for other injuries. The Civil Justice Review Body also expressed concern about the cost of personal injuries litigation. The Review pointed out that

the cost of litigation is often quite disproportionate to the amount involved in the claim; and pointed out that it can cost a total on each side of £5,000 in legal fees to win or lose a damages claim for £5,000.

- 3.21 Again, a number of recommendations of the Review Body which have been accepted will help to reduce the cost of personal injuries litigation.

C. Responding to the criticisms - an insurance based no-fault scheme

- 3.22 The measures described above which are aimed at dealing with the problems of delay and cost need not be regarded as necessarily the only measures which should be adopted to counter these problems. A no-fault compensation scheme in this area has the potential to provide further help towards these aims. As stated at the outset of this paper, the Civil Justice Review suggested that: -

"a number of advantages might flow from the introduction of a no-fault scheme funded by private insurance and restricted to claims arising out of less serious road accidents.... It would reduce uncertainty for claimants, avoid the delays and costs associated with litigation and, by removing disputes from the courts, reduce pressure on the court system. On the other hand it would also increase motor insurance premiums."

- 3.23 There are two key differences between the no-fault scheme proposed by the Pearson Commission (which has not been supported by the Government) and the scheme mooted by the Civil Justice Review. The first is that the scheme would be financed by private insurance: in other words, the motorist would bear the cost of the scheme and there would

be no additional costs to public funds. The second is that the scheme would not be aimed at all cases of road accident injuries, but would be limited to "less serious injuries", that is, smaller claims. A no-fault scheme limited in this way would be aimed at the type of case which was the least cost-effective and would go a long way to respond to the criticisms of the present system.

3.24 The likely acceptability of a no-fault scheme depends in large measure upon the elements which go to make up the framework of the scheme. The next Part of this paper discusses the options for a no-fault scheme. In relation to several issues, a number of possible options are put forward with the main arguments for and against each set out. In most cases, a preference has been expressed, but in some cases no final view has been reached. Throughout, it will become apparent that there are a number of places where a balance has to be struck between conflicting interests. Thus:

- a scheme which is wide in scope may benefit more victims, but at an unacceptably high cost to the motorist.
- the lower the levels of compensation under the scheme, the more likely it is that individuals will wish to resort to the ordinary process of litigation.
- a scheme which is simple to operate may produce a degree of injustice and unfairness which cannot readily be defended.

3.25 It may be thought by some that the solution to the problems in this field lies, not in the shape of a no-fault compensation scheme of the kind proposed in this paper, but

in the introduction of strict liability for motor vehicle injury in place of the existing liability for negligence. As noted above, this course was considered and rejected by the Pearson Commission. While there would be advantages in adopting strict liability, a number of considerations weigh against taking this course. Thus, the need to preserve a range of defences, including in particular a defence that it was entirely or partly the plaintiff's fault, would mean that the volume of litigation may not be significantly reduced. However, the financial burden on the motorist would be likely to increase substantially, since the numbers of potential claims for compensation would increase. A no-fault scheme which is limited, at least at the outset, to smaller claims offers the prospect of a practicable, albeit cautious, solution to the most pressing problems in this area at relatively low cost, and is the preferred approach.

PART IV: THE OPTIONS FOR A POSSIBLE SCHEME

A. Outline of the Scheme

1. No-fault compensation

4.1 The objective of the scheme now proposed is to provide a fair, simple, expeditious, non-contentious system of compensation with a useful but carefully limited scope at no additional cost to public funds.

2. Road traffic

4.2 It is proposed to limit the scheme to accidents on the road, being those involving one or more motor vehicles. The choice of this group of accidents is determined by the following factors:-

- Apart from accidents in the home, road accidents constitute one of the largest groups of accidents resulting in personal injury.
- Personal injury cases arising from road accidents generate a substantial volume of contentious litigation.
- The cost of litigation is often quite disproportionate to the amount involved in the claim. The legal costs of both parties to a personal injury case which goes to trial often equal or exceed the damages recovered.
- Delay in receiving compensation is a significant factor in a large number of such cases.

3. Limitations

(i) Personal injuries

4.3 Claims under the scheme proposed would relate to those arising out of personal injury and would not extend to vehicle damage. This is partly a matter of priority and partly of practicality. The need to provide for personal injuries appears to be particularly pressing, while it might be difficult to delineate a vehicle damage scheme.

(ii) Financial limit

4.4 It is proposed that there should be a lower limit of £250 below which claims will not be allowed; and an upper limit of £2,500. These figures are chosen so as to encompass reasonably simple claims which are not economic to pursue through the courts by means of full-scale litigation.

4. Fair

4.5 The scheme ought to produce benefits for victims which are fair as between individual victims similarly hurt. It should also be fair in the procedures which are available to victims who make a claim.

5. Non-contentious

4.6 This proposal is for a no-fault scheme, that is to say, the injured claimant will not need to show fault on the part of the respondent. Thus the scheme will avoid many disputes about liability and reduce those relating to causation. Quantum will remain in issue. Because the scheme is not concerned with blame, it will not have a deterrent, demonstrative or punitive function. Its function is simply to compensate. Tort claims up to the proposed limit will effectively be ruled out for those who claim under the

scheme. Any compensation awarded under the scheme would be set off against any civil damages awarded by the courts.

6. Expeditious

- 4.7 Claims should be disposed of as soon as is reasonably possible. Full scale litigation up to £2,500 will be very much reduced.

7. Administration and funding

- 4.8 It is proposed that the scheme be funded and operated by the insurance industry via motor vehicle premiums.

B. Scope of the Scheme

1. "Motor vehicle"

- 4.9 The compulsory insurance provisions of the Road Traffic Act 1988 apply to any "motor vehicle" (defined as a "mechanically propelled vehicle intended or adapted for use on roads"). In view of the principal objectives of the no-fault scheme, it is proposed that the coverage of the scheme should be restricted to accidents involving motor vehicles. The scheme would thus embrace the vast majority of road accidents which result in personal injury.
- 4.10 Such coverage would leave some gaps. The main gaps would be accidents involving injury to cyclists and, to a lesser extent, pedestrians where no motor vehicle was involved. The proportion of the total number of injuries arising from road accidents relating to injuries to cyclists and pedestrians where no motor vehicle was involved is comparatively small.

4.11 In the absence of compulsory insurance provisions for cyclists, it is not proposed that they should be covered by the scheme, except where a motor vehicle was also involved. Where no vehicle was involved, the injured cyclist would not be in any worse position than he or she is at present. His or her ability in appropriate cases to claim compensation against another person for negligence would remain. The same argument applies to pedestrians.

2. Place of the accident

- 4.12 The compulsory insurance provisions of the Road Traffic Act 1988 in respect of third party liability cover the use of motor vehicles on "any highway and any other road to which the public has access". This test includes (by interpretation) roads on which the public are to be found who have not obtained access by overcoming a physical obstruction or in defiance of a prohibition. This therefore provides a possible basis for the coverage of the scheme, but it is arguable that its scope would be too limited.
- 4.13 If the coverage of the scheme is to be wider than accidents on roads to which the public has access, how far should it extend? Should it, for example, cover accidents occurring on any land to which the public has access? This will exclude accidents occurring on private land to which the public has no right of access (other than private roads on which the public are to be found), but it would extend to areas such as open commons, moor-lands or even beaches.
- 4.14 The Road Traffic Bill now before Parliament provides for an extension of the scope of the main bad driving offences to include offences committed while driving on a "road or other public place". The intention is to include offences committed in, for example, public car parks. Application of the test in the Road Traffic Act 1988 referred to in

paragraph 4.12, as opposed to the test in the Bill, could give rise to the possibility of injuries caused by a bad driving offence for which the victim could not obtain compensation under the scheme.

4.15 Many motor insurance policies already provide cover against third party liability which goes beyond the limitation to accidents on roads to which the public has access. Some policies do not specify any restrictions in this respect in providing an indemnity against third party liability.

4.16 It is proposed that the scheme should apply to accidents occurring on "any highway and any other road to which the public has access" (following the test in the Road Traffic Act 1988).

4.17 The proposed test at paragraph 4.16 would not be competent in Scotland as Scottish legislation uses the general term "roads" and makes no reference to highways. However, the same considerations as those identified in paragraphs 4.12 to 4.15 apply in Scotland where it is proposed that the scheme should apply to vehicles on any road within the meaning of the Roads (Scotland) Act 1984 and any other way to which the public has access.

4.18 Views are also invited on the alternative possibility, mentioned at paragraph 4.14, of using the test in the Road Traffic Bill (applicable in England and Wales and Scotland), namely accidents occurring on a "road or other public place".

3. The circumstances giving rise to a claim

4.19 What connection should there be between the harm suffered for which compensation is to be paid and a motor vehicle? Whatever test is to be adopted, it must be objectively straightforward to apply. This is essential if disputes

over "liability" are to be avoided as far as possible. The test must also be fair in its application, so that the dividing line between those whose injuries fall within the scheme and those whose injuries do not does not give rise to too many undesirable anomalies. Too narrow a test will leave injured persons without a no-fault claim; too broad a test may place an unfair burden on the scheme and in particular on the insured motorist who will be funding it.

4.20 There should be no difficulty in devising a test which covers the vast majority of those who may loosely be termed "road accident victims", that is to say, drivers or their passengers who sustain injuries while travelling in a motor vehicle and pedestrians or cyclists who are knocked down by a motor vehicle. However, problems arise in the borderline areas. Some examples, as where cyclists are involved in accidents with motor vehicles, may help to illustrate this:

- (1) A cyclist runs into a car which is "negligently" parked.
- (2) A cyclist swerves to avoid a moving car and injures himself, without making contact with the car.
- (3) A cyclist runs into the back of a car which is properly parked at the side of the road and suffers injury.
- (4) A cyclist swerves to avoid a properly parked car and injures himself, but there is no physical contact between himself and the car.

4.21 On one view, any test should aim to cover all these cases. However, the case for including (1) and (2) is stronger than that for including (3) and (4), because in the latter cases the accident is entirely the fault of the cyclist (who will

not have contributed to the cost of the scheme) and the "involvement" of the car in the accident is purely fortuitous. To prescribe a test which brings in questions of fault as a means of marking the boundary line seems inappropriate for a no-fault scheme.

4.22 With these problems in mind, three possible tests have been considered: (i) use of a motor vehicle, (ii) presence, (iii) involvement.

(i) Use

4.23 "Use" is the term adopted in the context of the compulsory insurance provisions of the Road Traffic Act. These provisions require a motor insurance policy to insure the persons specified in it against liability which may be incurred in respect of the death of, or injury to, any person (or damage to property) caused by, or arising out of, the use of the vehicle on a road.

4.24 Adoption of this test would have the advantage over the other two tests that it ties in with the terminology of existing insurance provisions. In relation to the four examples listed above, it is likely that a "use" test, as currently interpreted, would result in compensation being payable to the victim in examples (1) and (2).

(ii) Presence

4.25 A test based on the "presence" of a motor vehicle may, in some respects, provide a clearer test than "use", though at the expense of making the scheme cover a wider range of accident injuries. However, arguments could arise as to whether a vehicle was sufficiently close to the accident to amount to being "present". If adopted, the test would be likely to mean that compensation would be payable to the injured cyclist in all four examples listed above.

(iii) Involvement

4.26 There is probably little to distinguish a test based on "involvement" of a motor vehicle as opposed to "presence". However, a test of involvement is more likely than the test of presence to be open to differing interpretations, unless it were further defined.

(iv) Conclusion

4.27 It is proposed that the scheme should follow the test applying in the compulsory insurance provisions which is based on whether the injury was caused by, or arose out of, the use of a motor vehicle, although it is recognised that this will not avoid the relevant adjudicating body having to determine borderline cases.

4. Personal injury only

4.28 The Civil Justice Review envisaged that the no-fault scheme should cover compensation for personal injuries arising in less serious road accidents. It is proposed that the scheme should be confined to providing personal injury compensation.

4.29 Consideration has nonetheless been given to the question whether the scheme should also extend to cover damage to property, the main element of which would be vehicle damage. There may be some advantages in applying the scheme to both types of damage: in many cases where a road accident victim suffers personal injury, there will also be damage to one or more motor vehicles.

4.30 However, there would be a number of serious disadvantages in trying to cover property damage as well as personal injury.

- The scope of the scheme would be very considerably wider. Road accident figures show that there are some 8 to 10 road accidents which involve only vehicle damage for every road accident involving injury to the person.
- The capacity of the scheme to provide an expeditious and non-contentious system of compensation for those who suffer personal injury could be jeopardised if it were to cover both types of damage.
- A scheme covering vehicle damage on a no-fault basis would be likely to increase costs to the motorist very substantially.
- It is unnecessary to do so, since claims for vehicle damage are often settled by insurance companies on a "knock-for-knock" basis, that is to say, where two vehicles are involved in an accident, each insurance company agrees to meet the claim of its own insured party. The practical effect of this is to reduce both the time taken for the settlement of claims and the number of cases which have to go to court to be resolved. Claims for compensation for personal injury give rise to a far greater volume of contentious litigation than claims relating to property damage.

4.31 It is therefore proposed that claims for property damage arising from road accidents should continue to be dealt with as now and should fall outside the scheme.

5. Who may claim and against whom?

- 4.32 The aim of a no-fault compensation scheme for motor vehicle accident casualties funded by private insurance would be to provide compensation without the need to prove fault to all road users, whether driver, passenger, pedestrian or other road user, who are injured in a road accident caused by or arising out of the use of a motor vehicle. This section examines two possible bases for the scheme: a "first party" basis and a "third party" basis. The nature of, and differences between, these two approaches will be explained first, before setting out their advantages and disadvantages.
- 4.33 Under a first party scheme, the policy in respect of a motor vehicle would provide compulsory first party insurance for the owner of the vehicle, any authorised driver of it, any passenger in it and any other person who suffers an injury caused by or arising out of the use of the vehicle - unless he is the driver or a passenger in another vehicle and so covered by insurance in respect of that vehicle. Any person for whom such first party insurance is provided would have a direct claim against the insurer. Compulsory first party insurance of this kind would be in addition to the existing compulsory third party liability insurance for injury and damage caused by negligence.
- 4.34 Under a third party scheme, on the other hand, the driver's compulsory third party liability insurance would be extended to cover the risk of causing injury to another (that is, the third party) by or arising out of the use of the motor vehicle regardless of the driver's fault. The coverage of a third party scheme would be less comprehensive than a first party scheme, in that a driver injured in an accident in which no other motor vehicle was involved would not be able to claim under it.

4.35 The arguments for and against these schemes are now considered.

(i) Coverage

4.36 The main advantage of a first party scheme is that all those injured in a road accident involving a motor vehicle would be treated equally and would be compensated within the limits of the scheme. It would not matter whether they were the driver or passenger of the motor vehicle, or another road user struck by it. The inability of some drivers injured in single vehicle accidents, which may have occurred through no-fault of their own, to obtain compensation for their injuries is one of the disadvantages of the present system.

4.37 It may, however, be argued that it is no business of the state to compel drivers to insure themselves against the risk of injury in an accident where no other vehicle is involved, and that in any case it is unnecessary to do so. An important objective of the no-fault scheme is to reduce the need for small scale litigation. In the case of drivers involved in single vehicle accidents, very few cases are litigated because there is rarely a third party to sue.

(ii) Cost

4.38 A no-fault compensation scheme funded by private insurance would mean higher insurance premiums to fund the additional compensation, although the additional cost should be partly offset by the reduced cost of litigation. For a first party scheme the additional cost will be greater, because more victims will be compensated, that is, drivers in single vehicle accidents.

4.39 It is also important to consider how these additional costs will bear upon different classes of road user. In a first

party scheme, the driver or rider would have to bear, through insurance premium, the cost of his or her own compensation in the event of an accident. Thus the increase in premium would be greatest for those most likely to be injured in an accident, for example motor cyclists. It might be thought to be unfair that those involved in accidents should be required to bear the cost of their own compensation and risk losing part or all of any no-claims bonus, since the accident may be the fault of another. But on the other hand, requiring drivers and riders to bear the cost of their own compensation in this way would provide an incentive to use vehicles which provide more protection for their occupants. This could have significant road safety benefits. In a third party scheme, on the other hand, the premium increase would be more evenly spread over different classes of road user. Whichever scheme was adopted, most insurance companies would be likely to offer no-claims bonus protection policies.

(iii) Fraud

4.40 Under a first party scheme there could be an increased risk of fraudulent claims because some might be tempted to put in false claims alleging minor injury resulting from an accident in which no other vehicle was involved.

(iv) Disputes

4.41 Under a scheme administered by individual insurance companies rather than a central body (see paragraphs 4.91-4.99) there will always be the possibility of disputes between those injured and the insurance company. In a first party scheme, disputes could be between the insured and his or her own insurance company. In a third party scheme, such disputes would always be between the injured and another company.

(v) Conclusion

4.42 The arguments for and against the two alternative approaches of a first party or a third party scheme need to be weighed against one another. A first party scheme would be more comprehensive, but it would cost more, and the cost would bear more heavily on those most likely to be injured in an accident. A third party scheme would be a less radical option which would fit more easily into the present insurance system.

C. The Basis of Compensation

1. Heads of damages

4.43 As has been noted earlier, where civil liability is established or admitted, damages are awarded by the courts for both monetary and non-monetary loss according to principles developed by the common law. The objective is full compensation, so far as that is possible in money terms. The main types of monetary loss are likely to be expenses incurred as a result of the accident, loss of earnings and loss of future earning capacity. Classes of non-monetary loss include pain and suffering, loss of physical function, disfigurement and loss of amenity. In the case of less serious injuries, such as a broken limb or cuts and abrasions from which recovery is complete, pain and suffering may well be the main element in damages.

4.44 The first issue in relation to the payment of compensation under the scheme is whether it should follow the principles of the established applicable heads of damages recognised by the legal systems of all areas of the United Kingdom, or whether an alternative approach should be adopted.

4.45 The elimination of the requirement to show fault for the purposes of a claim would mean that more people, perhaps two or three times more, would be eligible for compensation for personal injury arising from road accidents than at present. Plainly, therefore, if awards under the scheme were to follow the established heads of damages, the overall amount of compensation to be paid to road accident victims would increase, although such increase would be partly offset by savings in administration and legal costs arising from an anticipated reduction in the volume of litigation.

4.46 In the light of the considerations of cost mentioned in the previous paragraph, it is arguable that compensation under the scheme should not be full compensation in the common law sense. Most "no-fault" schemes which have been adopted in other jurisdictions do not make such provision. There are several ways in which a reduced level of compensation might be achieved, for example, by:

- (i) restricting compensation for loss of earnings to a percentage (say 75%) of previous income or an upper limit of twice average industrial earnings whichever is smaller;
- (ii) providing for a percentage discount on the level of damages which a court might be expected to have awarded either in relation to the whole claim or the element of pain and suffering only; or
- (iii) restricting the payment of compensation to monetary losses alone.

4.47 Aside from concern about the cost of the scheme, a further justification for providing less than full compensation is that it would be proper to take into account the likely speed, certainty and simplicity of payments under the scheme

as compared with the existing system. A particular argument in favour of the restriction instanced in paragraph 4.46(iii) (no compensation for non-monetary losses) is that the restriction would itself facilitate the operation of the scheme and result in speedier settlement of claims. While the court's task and that of the lawyers, in evaluating non-monetary losses for settlement purposes is aided by the existence of a tariff in England and Wales which relates to particular classes of injury and is derived from reported court decisions, the application of the tariff may be complex and highly variable from case to case and can itself, therefore, be a cause of delay. The same could also be true if these heads of damages were to apply to claims under the scheme.

4.48 On the other hand, to provide anything less than full compensation could, as a matter of principle, be said to be objectionable. Moreover, in practice, provision of a reduced level of compensation could, particularly if the reduction were at all significant, discourage many from claiming under the scheme and encourage them to make a civil claim based on fault. While this problem could be obviated altogether if claimants were to be barred from making a civil claim where the amount claimed is below the upper limit of the scheme, this approach itself gives rise to problems, as is explained in paragraph 4.70 below and is probably unacceptable.

Conclusion

4.49 In the light of these arguments, it is proposed that the scheme should aim to provide compensation in accordance with the established heads of damages.

2. Should there be a tariff?

4.50 If, as is proposed, compensation under the scheme were to cover claims for non-monetary losses, should these claims be assessed by reference to a tariff drawn up for the purposes of the scheme - that is to say, a table listing compensation levels appropriate to different types or classes of injuries - or should they be assessed by reference to established levels (whether at the same or reduced levels)?

4.51 A tariff drawn up for the purposes of the scheme would have several advantages. If claimants were able to refer to a table of injuries against which were recorded appropriate levels of compensation for pain and suffering, they might have a clearer idea of the amount which they would be likely to be awarded. Claimants might feel more confident about making claims on their own without requiring the assistance of a lawyer. Equally those administering the scheme might find that the task of assessing compensation in individual cases would be more straightforward. There would be scope for taking a broad brush approach to the categorisation of injuries and levels in the interests of simplification. If the scheme were to be aimed at providing compensation for less serious injuries, the task of setting the levels for the purposes of the tariff would not be as great or as complex as it would be if the scheme were to cover the full range of possible injuries.

4.52 A tariff system would have certain disadvantages. From the claimants' point of view, the calculation of compensation would be less individualised than under the present system. Although this would be beneficial so far as the administration and ease of payment is concerned, it may be thought to be less fair to claimants.

4.53 Who would determine the levels for the tariff? In the case of civil claims for damages, this is a matter which is left to the judges. Under an insurance based, no-fault scheme, this could be left to the motor insurance industry as a whole or (if adopted) to any central body administering the scheme, but the absence of an independent element could give rise to public concern. Possible ways of meeting this concern would be to give the task of setting the tariff to:

- (i) an independent Board, or
- (ii) a tribunal.

Setting up a Board for this purpose could be regarded as an unnecessarily cumbersome approach to a relatively narrow problem. Once the Board had established the tariff, there might be little need for it to continue in being, other than perhaps for periodic reviews of levels, which in any event could be linked to an appropriate inflation indicator. A tribunal would be feasible, but, as is argued in paragraph 4.115 below, this is not the preferred option for dealing with any disputes relating to liability or quantum.

Conclusion

4.54 Accordingly, it is proposed that the scheme should adopt established levels (or tariffs) for the purpose of assessing awards for non-monetary losses, rather than operate a separate tariff of its own, which might diverge substantially from awards in the courts.

3. The financial limits

(i) Lower limit

4.55 Provision of a lower limit on the level of compensation to be paid in individual cases would serve to exclude very

small claims which would be uneconomic to administer and whose inclusion would lead to a loss of efficiency in the handling of the more substantial claims, as well as to a higher level of insurance premiums. The Criminal Injuries Compensation Board, for example, applies a lower limit to claims arising from crimes of violence, currently set at £750. A threshold could also serve as a demarcation between cases where there is some tangible evidence of injury and cases where there is none.

4.56 There is, on the other hand, a risk that, if a lower limit is set, those whose claims fall below the limit may seek to obtain compensation by means of litigation. The higher the level at which the limit is set, the greater may be the numbers who will look to the courts for redress. Equally it is possible that, because the sums are modest and the courts will require proof of negligence, greater numbers (who will not claim in the courts) will have no redress at all.

4.57 A balance must be struck between these competing considerations. Provided that it is not set too high, it would seem sensible to apply a lower limit. It is proposed that there should be a lower limit of £250 below which claims should be excluded.

(ii) Upper limit

4.58 As has already been indicated, the proposal is for a scheme to be restricted to "less serious" injuries arising from road accidents. This does not mean that there must be a definition of "less serious injury" for the purposes of the scheme. Rather this restriction can be achieved by providing an upper monetary limit for compensation payable to individual claimants in respect of any one claim (or number of claims arising out of one cause).

4.59 It is suggested that a limit in the region of £2,500 would be an appropriate upper limit. A relatively modest figure is proposed as a starting point, primarily because this would be a new scheme, but the level could be increased at a later stage (see (iii) below). It should also be borne in mind that any higher figure would bring within the scheme more complex cases which would be likely to lead to longer delays in settling claims. (The question whether a person with serious injuries should be entitled to claim no-fault compensation as well as civil damages is considered below.) A further important consideration is that the scheme would be based on compulsory insurance requirements; the upper limit should therefore be no higher than can be justified by the compulsory nature of the scheme. Moreover, a large number of personal injury claims arising from road accidents result in court awards for plaintiffs of amounts below £2,500 (see paragraph 2.18 above). A restriction to small personal injury awards of this order may therefore be expected to have a significant impact in reducing the amount of personal injury litigation, with benefits for victims and insurers, as well as the court service.

(iii) Review mechanism

4.60 Whatever upper and lower limits are fixed, a review mechanism should be included in the scheme to enable changes to be made. The precise form which a review mechanism would take is a matter for further consideration; one option would be to provide for the limits to be revised by order made by statutory instrument. Not only would such a review mechanism enable the limits to be adjusted to take account of inflation, it would also allow for the scope of the scheme to be extended, in the course of time, to enable a wider range of road accident victims to obtain a higher level of benefits under the scheme. Any such extension would, of course, depend upon the satisfactory operation of the scheme.

4. Relationship with civil law claims

4.61 The relationship between awards of compensation under the scheme and claims for civil damages is examined separately in relation to awards which fall below and above the upper limits of the scheme.

(i) Awards within the limits of the scheme

4.62 Where a plaintiff is awarded civil damages for motor vehicle injury below the upper limit of the scheme, it is proposed that he should lose his entitlement to costs. In addition, any no-fault payment would be off-set from any civil damages awarded. It would not be necessary to go further than this and place a bar on a person from suing for compensation for sums below the upper limit. If the scheme is to provide compensation at the equivalent level of damages, the effect in practice should be to restrict the tort action for motor vehicle injury to cases of more serious injury, that is, where there is a claim for compensation above the upper limit of the scheme.

(ii) Awards above the upper limit of the scheme

4.63 Where a person has a more substantial claim arising from motor vehicle injury, it is proposed that he should be allowed to claim the maximum amount of no-fault compensation and, in appropriate cases, to sue for further damages. A costs sanction would need to be applied where the plaintiff is awarded damages just above the upper limit of the scheme. As in the previous paragraph, the no-fault payment would be off-set from any civil damages awarded.

4.64 A consequence of allowing such claims under the scheme would be that (subject to the exclusions from the scheme) all persons suffering road accident injuries would be able to

claim no-fault compensation, irrespective of the seriousness of their injuries. If the contrary view were taken and such claims were to be disallowed, it would mean that potential claimants would have to elect whether to claim under the scheme or whether to pursue their claim through litigation. This would have the potential for the more seriously injured victim to be worse off than the less seriously injured. Although the former approach is put forward in preference to the latter, both are now discussed.

(a) Claims under the scheme possible, irrespective of the seriousness of the injury

- 4.65 Under the preferred option a seriously injured passenger, for example, would be able to make a no-fault claim and would not be prevented from also pursuing a civil claim in negligence for a substantial additional sum. Such a victim would have the advantage of being able to obtain some speedy compensation (without proving fault), while waiting for his larger, civil claim for damages to be determined or settled. In order to avoid the possibility of double compensation, any no-fault award would be taken into account in any subsequent award of damages for the injury.
- 4.66 It would be necessary to bear in mind the cost of this option. There would be the additional cost of providing no-fault compensation (albeit limited to the maximum payable under the scheme) to those with more serious injuries who either would not have made a claim under the existing law or whose claims would otherwise have failed because they could not prove that another was at fault.
- 4.67 Where an injured person is awarded compensation just above the upper limit of the scheme, again it may be desirable to provide that, even if the plaintiff obtains the amount claimed, he should be required to pay his own costs.

(b) Claimants must elect

- 4.68 The alternative option (which as already indicated is not the preferred option) would be to require road accident victims to elect whether to claim under the scheme or to bring their claim in the courts. If a victim elected to claim no-fault compensation, any award made under the scheme would extinguish his right to bring a civil action. Conversely, if he elected to bring a civil action, he would be barred from claiming under the scheme, even if he were to fail in his action.
- 4.69 One advantage of this option would be that the scheme would be likely to result in more cases being removed from the ordinary process of litigation. A victim who believed he had a valid claim for an amount slightly higher than the upper limit of the scheme may be satisfied by claiming the maximum under the scheme rather than pursuing a civil action. A majority of such victims could be expected to opt for a speedy settlement with a greater degree of certainty rather than take the risk of receiving nothing as a result of a failed civil claim.
- 4.70 However, a disadvantage of this option is that a very seriously injured person who sues may end up with no compensation at all (for example, because he fails to prove fault) whereas a less seriously injured person who opts to claim under the scheme may receive a maximum award under it. The inequality of treatment would be highlighted if both passengers were travelling in the same vehicle.

5. Fatal Accidents

- 4.71 It follows from the conclusion in the previous section that, while the proposed scheme is aimed at providing compensation for less serious road accident injuries, there is no reason,

in principle, why no-fault benefits should not be payable in cases of fatal road accidents. Thus, provided that they are within the proposed limits of the scheme, claims for compensation for loss of dependency, bereavement damages, funeral expenses and any other heads of claim which may be made in respect of a fatal accident, should be possible.

- 4.72 In most fatal accident cases which give rise to a claim, the amount claimed will be for a total sum above the proposed upper limit for the scheme. In that event, as already discussed above, any compensation payable under the scheme should be off-set from any higher award of damages subsequently made in a civil action for the benefit of the deceased's family.

6. Recovery of state benefits

- 4.73 The Social Security Act 1989, as amended by the Social Security Act 1990, provides for the recovery of state benefits from those who make compensation payments for personal injuries. In principle, these provisions will need to extend to awards made under the no-fault scheme.
- 4.74 In respect of any payment exceeding the "small payment limit" fixed from time to time (presently £2,500), provision will need to be made for the recovery of all benefits that would be recovered if the payment were caught by the 1989 Act. If the upper limit of the compensation scheme were to be restricted, as proposed, to £2,500, the recovery provisions would not apply, because they would not exceed the current small payments limit.
- 4.75 Under the 1989 Act, small payments are exempt from the recovery provisions. Instead, an offsetting of 50% applies

in respect of all benefits for a period of five years from the date of the accident. It is proposed that the same provision should apply in the case of the no-fault scheme.

7. Interest

- 4.76 It is for consideration whether, for the ease of administration, there should be no provision for awarding interest on any compensation claimed under the scheme.

D. Exclusions

- 4.77 To what extent should issues of fault remain relevant to the question of entitlement to compensation under the no-fault scheme? Arguably, the sole function of a compensation scheme which is not concerned with attributing blame should be to provide compensation. A no-fault scheme should not have a deterrent, demonstrative or punitive function. But how far should those whose injuries result from their own misconduct be excluded from being able to benefit under such a scheme? Some people may feel that such persons should not be cushioned from the economic consequences of their own misconduct by a compensation scheme financed by others.

- 4.78 There are three general points in relation to exclusions which should be noted at the outset. First, it is almost inevitable that any scheme will need to provide for some exclusions. Second, the scope of any exclusions ought not to depend on whether the scheme has a first party or third party basis (see paragraphs 4.32-4.42 above). Third, in the interests of certainty, the scope of any exclusion ought to be clearly defined and straightforward in its application. With these three points in mind, the possible bases of exclusions are now considered.

1. Criminal misconduct

4.79 There are a number of possible options for defining the categories of drivers who might be excluded from claiming under the scheme by reference to their criminal misconduct. These options are:

(i) Road traffic offenders

4.80 This would be a very broad category of persons who could be excluded from the right to claim no-fault compensation. It would exclude both the person who is guilty of causing death by reckless driving as well as the person convicted of exceeding a speed limit by 10 miles per hour. Such a wide exclusion would take the scheme a long way from the objectives of a no-fault compensation scheme and it is doubtful whether it would be acceptable.

(ii) Drink-driving offenders

4.81 It is arguable that, if any category of driving offender is to be excluded, the case for excluding from the scheme those who are convicted of driving while under the influence of drink or drugs is particularly strong. One insurance company at present does not provide cover (beyond the statutory requirement) in cases of this kind. To provide compensation for any injuries which drink-drivers suffer may be regarded as unacceptable.

4.82 On the other hand, to single out those who drink and drive, while ignoring other cases of criminally culpable driving, where drink was not involved, could be regarded as unfair.

(iii) Scheduled offenders

4.83 One possible way of meeting the criticism that a restriction on the exclusion to drink-drivers would be too narrow, would

be to exclude anyone who is convicted of a driving related offence which is punishable by six months' imprisonment or more and which has a real connection with the accident. Thus, as well as excluding the drink-driver (which would comprise the great majority of all driving offences punishable by six months' imprisonment or more), such a provision would also exclude someone convicted of a serious driving offence, such as reckless driving.

(iv) Driving while uninsured

4.84 It may be desirable in any event to exclude from benefit under the scheme those who at the time of the accident were driving while uninsured. This conduct is a summary offence under the Road Traffic Act 1988, carrying a maximum penalty of a level 4 fine (currently £1,000), discretionary disqualification and obligatory endorsement. To compensate a driver under the scheme who has failed to comply with compulsory insurance requirements would appear to be undesirable, particularly since the benefits of the no-fault compensation scheme would be financed by insurance premiums.

(v) No exclusions

4.85 A further option is not to provide for any exclusions from the scheme based on criminal convictions. This has the advantage that the scheme will be simpler to administer because there will be no need for enquiries to be made as to whether the claimant has been charged with, or convicted of, a criminal offence relating to the accident. Payments will not be delayed or put in doubt pending the outcome of a criminal trial. On the other hand, an enquiry of the claimant as to whether he or she has been asked to provide a breath test and, if so, the result would not be difficult to administer if drink-drivers were to be excluded.

2. Contributory negligence

4.86 As mentioned earlier, the injured person may have the level of damages awarded to him reduced to the extent that his own conduct contributed to his injuries or made them more serious. Thus, to take an obvious example in the present context, the failure to wear a seat belt may lead to a reduction in the damages recoverable to the extent of the claimant's share in the responsibility for the injuries, which may mean a reduction in the order of fifteen per cent. Another example of more culpable contributory negligence, would be a drunken pedestrian who is injured when struck by a car, in circumstances where the driver has also been negligent.

4.87 Under the no-fault scheme, questions of contributory negligence should be left out of account. This would mean that, if the level of awards were to follow recent decisions, some claimants would receive larger awards under the scheme than if they were to claim in tort. If this seems a surprising result, it has to be remembered that others will receive compensation in circumstances where, under the present system, no compensation will be payable at all because they are unable to show that anyone else was at fault.

4.88 It is proposed that contributory negligence should play no part in the scheme.

3. Self-inflicted injuries

4.89 It is usual for insurance policies to include a clause which denies payment being made under the policy to an insured

person in respect of the deliberate self-infliction of injuries (for example, in the case of attempted suicide).

- 4.90 It is proposed that no compensation should be payable under the scheme in respect of deliberately self-inflicted injuries.

E. Administration and Financing of the Scheme

1. Administration

- 4.91 The essence of the scheme under examination is that it would be financed by private insurance and that it should not place any additional burden upon public expenditure.

- 4.92 The main issue here is whether, as a privately funded scheme, it should be administered centrally by a single body, or whether it should be administered by individual insurance companies who provide motor insurance. These alternatives have their own advantages and disadvantages which are examined below. How these two options might work is examined first.

(i) Option 1: Administration by a Central Body

- 4.93 Under this option, a central body would be established to administer the scheme. It would be funded by means of a levy on all authorised motor insurers in much the same way as the Motor Insurers' Bureau is funded at present. It might be either a non-statutory corporation (like the Bureau) or it might be established by statute. Claims for compensation under the scheme would be made to this body, either directly (for example, in the case of an injured pedestrian) or indirectly (in the case of an injured driver) via the claimant's own insurance company.

(ii) Option 2: Administration by individual insurance companies

4.94 Under this option, no new dedicated central body would be required to administer the scheme. The scheme would be administered by individual authorised motor insurance companies. "No-fault" cover would be provided to motorists either by a separate insurance policy or by a separate section in existing policies. Claims would be handled by the appropriate insurance company involved:

- under a first party scheme, drivers would claim against their own insurance policy. Under a third party scheme, they would claim against the other driver(s), and would have no claim if no other driver was involved.
- passengers would claim against the driver's insurance policy;
- pedestrians and other road users would claim against the insurers of the vehicle involved in the accident;

Disputes relating to liability would be reduced, because there would be no need to prove that a third party was at fault.

(iii) The options examined

4.95 The advantages of having a central body are that a considerable degree of uniformity of approach towards the handling of claims, including questions as to "liability" and the size of compensation awards, may be more readily achievable. A central body, particularly a statutory body, could incorporate an element of public control, for example, in relation to the composition of its Board (with

appointment of its members perhaps being made the responsibility of the appropriate Secretary of State or the Lord Chancellor) and a requirement to publish an annual report.

4.96 On the other hand, the scale of an organisation required to operate a national no-fault scheme would be considerable. It would be far larger than the Motor Insurers' Bureau and would require a system of regional offices. Another drawback is that there would be much duplication of effort between the central body and individual insurance companies. This would arise because of the scheme's restriction to compensation for less serious personal injury; most accidents involving a claim for personal injury will also lead to claims for compensation for vehicle damage under motor policies. Having a central body superimposed on the existing system could therefore result in higher administration costs overall. Finally, the existence of a new central body might increase the workload of other bodies, such as the police.

4.97 The disadvantages attaching to a central body mentioned in the previous paragraph, that is to say, the scale of the operation, duplication of effort and unnecessary expense, would not apply if the insurance industry, through individual insurance companies, were to operate the scheme by extending the scope of existing insurance arrangements. The industry is, after all, well used to handling all types of insurance. The no-fault scheme would arguably only require a different approach to offering motor insurance cover for certain risks.

4.98 The crucial issue therefore would be whether the public would be offered the appropriate level of protection to ensure the fair operation of the scheme, if it were left to be administered by insurance companies.

(iv) Conclusion

4.99 It is proposed that the scheme should be operated by individual motor insurance companies rather than by a dedicated central body. Further consideration should be given to the question whether the scheme is operated under statutory powers; or by means of new internal insurance market agreements; or whether it should operate under a formal agreement between the industry and the Secretary of State for Transport, on similar lines to the agreements setting out the responsibilities of the Motor Insurers' Bureau.

2. Financing

- 4.100 There would be two main components to the costs of the scheme. One would be the administration costs in operating the scheme, the other would comprise the payment of compensation to meet claims.
- 4.101 In the light of the proposal that the scheme should be administered by individual insurance companies, the financing of the scheme would be met by motorists through the payment of motor insurance premiums.
- 4.102 The level of premiums which motorists would be compelled to pay in order to fund a scheme as outlined in this paper is difficult to predict. Relevant factors would obviously include the level of the upper and lower limits of compensation and the number of claims likely to be generated. On a rough estimate, if the scheme were to have an upper limit of £2,500, the average premium increase might be in the order of 5 to 7 per cent depending on whether drivers involved in single vehicle accidents were to be included in the scheme. However, granted that the level of premiums

payable by motorists under the existing system varies from company to company, it is clear that individual companies would almost certainly look upon the new risks involved in different ways and set their premiums accordingly.

- 4.103 If the scheme were to be administered by a central body (contrary to the present proposal), it may well be that an alternative means of financing the scheme would be required (for example, a levy on insurance companies), although ultimately the motorist would be contributing to the cost in much the same way through his insurance premiums.

3. Exempted classes of vehicles

- 4.104 The Road Traffic Act exempts the owners of certain vehicles from the compulsory insurance requirements. The exemption covers public service vehicles, vehicles owned by local authorities and others who are able to meet liabilities from their own resources. In spite of the exemptions, in practice many of these bodies do in fact take out insurance cover.
- 4.105 If those who are injured in an accident involving a vehicle which is not covered by compulsory insurance by reason of an exemption are to be in no worse a position than those who are injured in an accident involving an insured vehicle, provision would need to be made to ensure that no-fault compensation is paid in such cases on the same basis as is provided for under the scheme. While it would be possible to make such provision through non-statutory undertakings and agreements involving central and local government and other public bodies, this would not cover every category of "exempt vehicle" (for example, those

vehicles whose owners have deposited £15,000 with the Accountant General of the Supreme Court, as provided by s.144(1) of the Road Traffic Act 1988). If all-embracing coverage were to be seen as essential in the interests of producing an equitable scheme, this could only be achieved by statutory intervention.

F. Resolving Disputes

4.106 A number of claimants will be dissatisfied either because their claim is rejected on liability grounds or (more likely) because they consider that the amount offered in settlement of the claim is too low. Consideration has therefore to be given to the most appropriate way of resolving such disputes. The ordinary process of litigation is considered as the first option, before possible alternatives.

1. The courts

4.107 Reliance on the existing avenues of resort to the courts to resolve issues of liability and quantum arising under the scheme would have the advantage that it would not require any new adjudication system to be established. Although the total number of claims could be expected to increase (see paragraph 4.45), there would be far fewer disputes as to liability as a result of the removal of the requirement to show fault.

4.108 At present any claim in a county court for a specified sum which falls below a fixed financial limit (currently £500) is automatically referred to arbitration by a District Judge under the small claims procedure. The District Judge has power to rescind such a reference on application by either of the

parties, if he agrees that the case is more suitable for full trial in a county court.

- 4.109 The small claims procedure is intended as a quick, cheap and simple alternative to full trial. Legal representation is not banned, but is discouraged by the fact that legal aid is not available and that costs do not normally follow the event. For those who qualify, advice and assistance under the "green form scheme" is available in the early stages of a case, but this does not cover representation at a hearing.
- 4.110 The detailed recommendations of the Civil Justice Review on small claims are still under consideration. It can safely be assumed however that disputes arising under the no-fault scheme would, if dealt with in the county courts, be determined either as small claims or as ordinary trials.
- 4.111 In Scotland, as explained in paragraph 2.19 above a claim must be for a specific sum, and the value of the claim determines the venue for hearing the case and the appropriate procedure for dealing with it. For example, if the value of the claim does not exceed £750 the case will be dealt with in the Sheriff Court under Small Claims Procedure. Claims of value between £750 and £1,500 are also dealt with in the Sheriff Court under Summary Cause Procedure. The Court of Session and the Sheriff Court have concurrent jurisdiction to deal with claims of value over £1,500.
- 4.112 The Small Claims Procedure was introduced in Scotland in November 1988 and has certain similar features to the English system. For example, legal aid is not available and also the amount of expenses that may be awarded is restricted in contested cases (i.e. claims

up to £200, no expenses: claims over £200, expenses not exceeding £75).

4.113 In relation to Northern Ireland, the small claims procedure does not apply to personal injuries actions, nor does it apply to road traffic damage only claims (County Court Rules (Northern Ireland) 1981, Order 26 Rule 4). Accordingly, the resolution by a court of a dispute under the scheme would fall within the jurisdiction of the county court in Northern Ireland.

4.114 The main alternatives to litigation in the courts would appear to be:

- a tribunal;
- a system of informal private arbitration.

2. A tribunal

4.115 A statutory tribunal, dedicated to the handling of disputes arising in connection with claims for compensation under the proposed scheme, would remove a body of cases from the court system but it would probably offer few, if any, advantages over trial in the courts. The availability of legal aid for representation could not be assumed. The expense of establishing and administering a nationwide tribunal system with a relatively narrow remit would be difficult to justify. For these reasons, this option is rejected.

3. Arbitration

4.116 It would be possible to establish a system of private arbitration for the resolution of disputes arising under the scheme, along the lines of the arbitration scheme operated by the Motor Insurers' Bureau. The main features of such a scheme would be:

- arbitration would be the only method of dispute resolution available;
- selection of an arbitrator by an independent body from a suitably qualified panel;
- appointments to the panel could be made the responsibility of the Lord Chancellor;
- arbitration might be dealt with on the papers, without an oral hearing, although it might be necessary to allow for the possibility of an oral hearing where either party was dissatisfied with the outcome (the M.I.B. scheme does not allow for oral hearings);
- the decision of the arbitrator would be final, subject to a right of appeal to the courts on a point of law;
- the arbitrator could, at his discretion, award the cost of his fee against the applicant if he considered the case unreasonable; otherwise each party would be required to meet their own costs (with the insurance industry meeting the arbitrator's fee out of motor insurance premium income).

4.117 Such a procedure offers the prospect of possible savings in administrative and legal costs as compared with the ordinary process of litigation. On the other hand it is by no means clear that an acceptable degree of uniformity of approach to decision-making, both on liability issues and on the size of awards, would be achieved. Moreover, the process of selecting arbitrators for individual cases would be a sizeable undertaking for whichever independent body was chosen for the task. (It would, for example, be likely to involve a much larger number of arbitrations than are currently established under the M.I.B. scheme, where the Secretary of State for Transport makes the selection.)

4. Conclusion

4.118 The option of a statutory tribunal does not appear to offer advantages and it is provisionally rejected. There remains a choice between county court (or Sheriff Court) litigation and private arbitration. Views are sought on which should be adopted.

G. Other Issues

1. Motor Insurers' Bureau

4.119 Any extension in the scope of the liability of the drivers of motor vehicles to pay compensation in respect of injuries caused by or arising out of the use of their vehicles will have an impact on the scope of the agreements between the Secretary of State for Transport and the Motor Insurers' Bureau (paragraph 2.25 above). The Uninsured Drivers' Agreement will need to be amended to ensure that, where the driver of a vehicle involved in an accident which causes bodily injury to a victim was uninsured, the M.I.B. will pay

compensation to the victim in accordance with the provisions of the scheme. In relation to the Untraced Drivers' Agreement, the M.I.B. could be faced with a number of problems by reason of fraud, and the practicability of extending this Agreement would need to be carefully examined. Any additional costs to the M.I.B. arising from these changes would be met by an appropriate increase in the levy on the premium income of motor insurers.

2. Fraud

- 4.120 As already indicated, the introduction of a no-fault compensation scheme may give rise to concern that it will lead to numbers of fraudulent claims. There is a risk of false claims being made, for example, by persons claiming to have received their injuries from a road accident when they were in fact sustained in some other circumstance. This risk may be smaller if the scheme is based on an extension of "third party" liability, rather than on a "first party" approach. Appropriate safeguards against fraud can be incorporated. In principle, there is no reason why the incidence of fraud should be any greater than in any other area where claims are made on insurance policies.

3. Monitoring

- 4.121 Should there be an independent body to monitor the workings of the scheme? In principle, this would be desirable but it does not appear to be essential. It would be helpful if the insurance industry could themselves publish periodical reports on the operation of the scheme. It may also be appropriate for the Government to conduct a review of the operation of the scheme within, say, two or three years after

implementation. A more formal review body is not
proposed.

PART V: SUMMARY OF QUESTIONS FOR CONSULTATION

- 5.1 The questions set out in this Part are intended to assist those who wish to comment on the proposals in the paper.

General

- (1) Do you agree that it is a worthwhile objective to devise and implement a scheme along the lines proposed in this paper, based on compulsory private insurance, and providing no-fault compensation for personal injury arising from less serious road accidents?

Scope of the scheme

- (2) Should the coverage of the scheme be limited to accidents involving motor vehicles? (paragraphs 4.9-4.11)
- (3) Should the scheme apply to accidents on "any highway and any other road to which the public has access" (following the test in the Road Traffic Act 1988) and the equivalent test for Scotland? If not, should coverage be wider than this covering, for example, accidents on a "road or other public place"? (paragraphs 4.12-4.18)
- (4) Should the scheme adopt the test applying in the Road Traffic Act based on whether the injury was "caused by, or arose out of, the use of a motor vehicle"? (paragraphs 4.19-4.27)
- (5) Should the scheme be confined to providing compensation for personal injury? (paragraphs 4.28-4.31)
- (6) Should the scheme be operated on a "first party" or a "third party" basis? A first party scheme would be more

comprehensive in that it would cover drivers or riders injured in single vehicle accidents, but it would cost more and the impact on insurance premiums would thus be greater. A third party scheme would be a less radical option which would fit more easily into the present insurance system. (paragraphs 4.32-4.42 and 4.102)

The basis of compensation

- (7) Should the scheme aim to provide full compensation following the established heads of damages? Or should compensation be at a lower level in one of the ways suggested in paragraph 4.46? (paragraphs 4.43-4.49)
- (8) Should provision be made for the setting of a tariff against which the levels of compensation for non-monetary losses, such as pain and suffering, are to be assessed? (paragraphs 4.50-4.54)
- (9) Should the scheme provide for a lower limit for awards of compensation below which claims would be excluded? If so, is £250 an acceptable threshold? (paragraphs 4.55-4.57)
- (10) Should the scheme provide for an upper limit for awards of compensation? If so, is £2,500 an acceptable upper limit? (paragraphs 4.58-4.59)
- (11) Should the lower and upper limits be subject to a review mechanism to allow for inflation and for possible expansion of the scheme? (paragraph 4.60)
- (12) Should there be a costs sanction to be applied where the plaintiff is awarded damages below, or just above, the upper limit of the scheme? (paragraphs 4.62 and 4.67)
- (13) Subject to the last point and to the off-setting of any no-fault award from any damages subsequently awarded, should

those with more serious injuries be entitled to claim under the scheme and, in appropriate cases, to sue for further damages? (paragraphs 4.63-4.70)

- (14) Within the proposed financial limits of the scheme, is it acceptable that no-fault benefits should be payable in the case of fatal road accidents? (paragraphs 4.71-4.72)
- (15) Is it acceptable that the provisions (contained in the Social Security Acts 1989 and 1990) for the recovery of state benefits from those who make compensation payments should apply to compensation payments under the scheme? (paragraphs 4.73-4.75)
- (16) Should the payment of interest in relation to compensation claimed under the scheme be excluded? (paragraph 4.76)

Exclusions

- (17) Should there be any exclusions from compensation under the scheme based on the commission of offences? If so, should they apply to any of the following categories:
- (i) all road traffic offenders,
 - (ii) only drink-driving offenders,
 - (iii) offenders who have been convicted of a driving related offence punishable by six months' imprisonment or more,
 - (iv) those driving while uninsured,
 - (v) any other categories not mentioned above?
- (paragraphs 4.77-4.85)
- (18) Is it acceptable that the defence of contributory negligence should play no part in the scheme? (paragraphs 4.86-4.88)

- (19) Is it agreed that compensation should not be payable under the scheme in respect of deliberately self-inflicted injuries? (paragraphs 4.89-4.90)

Administration and financing of the scheme

- (20) Is it acceptable that the scheme be operated by individual motor insurance companies rather than by a dedicated central body? (paragraphs 4.91-4.99)
- (21) Should the scheme be operated:
- (a) under statutory powers;
 - (b) by means of new internal insurance market agreements; or
 - (c) under a formal agreement between the industry and the Secretary of State for Transport on the same basis as the agreement establishing the Motor Insurers' Bureau? (paragraph 4.99)
- (22) Is it agreed that the financing of the scheme should be met by motorists through the payment of motor insurance premiums? (paragraphs 4.100-4.103)
- (23) Should provision be made, either by statute or by means of non-statutory undertakings, to ensure that those who are currently exempted from the compulsory insurance requirements of the Road Traffic Act pay no-fault compensation on the same basis as is provided for under the scheme? (paragraphs 4.104-4.105)

Resolving Disputes

- (24) On the assumption that a statutory tribunal should be ruled out, are the courts (viz. the county courts or in Scotland the Sheriff Court) the appropriate fora for deciding disputed issues of liability and quantum of awards under the

scheme or would a system of private arbitration be preferable? (paragraph 4.118)